

**Article 3: Environmental Health Quality Controls**  
(Retitled from "Water Quality Controls" on 3-8-1994 by O-18047 N.S.)

**Division 10: Smoking Regulations**  
(*"Smoking Regulations"*  
added 3-8-1994 by O-18047 N.S.)

**§43.1001 Purpose and Intent**

The smoking of tobacco, or any other weed or plant, is a positive danger to health and is a material annoyance, inconvenience, discomfort, and health hazard to those who are present in confined spaces, and to small children playing in Tot Lots. Therefore, in order to serve the public health, safety and welfare, the declared purpose of this Division is to prohibit the smoking of tobacco, or any weed or plant, in Public Places and Places of Employment except in designated smoking areas identified by signs as set forth in Section 43.1005 of this Division. A further purpose of this Division is to prohibit smoking in and around public Tot Lots.  
(Amended 11-27-2000 by O-18892 N.S.)

**§43.1002 Definitions**

For purposes of this Division, the following definitions shall apply:

"Bar" means an establishment where the primary business is sale of alcoholic beverages for consumption on the premises and where all occupants are required to be twenty-one (21) years or older.

"Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. It includes work areas, private offices, employee lounges, conference rooms, and employee cafeterias. It does not include a private residence or a Public Place.

"Public Park" has the same meaning as in Municipal Code section 113.0103.

"Public Place" means any enclosed area where the public is routinely permitted without special invitation. It includes retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, and public transportation facilities. It does not include a private residence.

"Shared Work Area" means a room in a Place of Employment in which more than one person is assigned to perform work during the course of a work shift period.

"Smoke" or "smoking" includes the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind.

"Tot Lot" means a play area designed for use by children that is located in a Public Park. The boundary of a Tot Lot is typically defined with concrete or wood, but may be defined by other material.

*(Amended 11-27-2000 by O-18892 N.S.)*

### **§43.1003 Prohibitions**

- (a) It is unlawful to Smoke in a Public Place or Place of Employment except in a designated smoking area lawfully established in accordance with this Division.
- (b) It is unlawful to Smoke in a Tot Lot or within fifty feet of a Tot Lot. This prohibition does not apply to private property.
- (c) It is unlawful for an owner, operator, or manager of any facility, business, or agency to designate or maintain a smoking area in a Public Place or Place of Employment which does not comply with the requirements set forth in Sections 43.1004 and 43.1005 of this Division.
- (d) It is unlawful for an owner, operator, or manager of any facility, business, or agency to knowingly permit ashtrays or other ash receptacles to be located in areas where smoking is prohibited by this Division.
- (e) It is unlawful to intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with the provisions of this Division.

*(Amended 11-27-2000 by O-18892 N.S.)*

### **§43.1004 Designation of Smoking Areas**

- (a) Smoking areas may be designated in Public Places, including facilities where bingo games are conducted pursuant to Section 33.3401 et seq., by proprietors or other persons in charge except in retail stores, retail service establishments, food markets, food service lines, restaurant waiting areas, hospitals and health care facilities, public conveyances, theaters, auditoriums, public assembly

rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which are open to the public, including restaurants within the above specified establishments which are constructed so that smoke can drift into the non-restaurant part of the establishment, or any other place where smoking is prohibited by the Fire Marshal or by other law, ordinance or regulation. Smoking areas may not be designated in areas through which the public must walk to gain access to nonsmoking areas, unless such arrangement is structurally necessary. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

- (b) In those Public Places where smoking areas may be designated, including bingo facilities, no less than seventy percent (70%) of indoor seating capacity shall be designated as a nonsmoking area and, after July 1, 1995 no less than eighty percent (80%) of indoor seating capacity shall be designated as a nonsmoking area.
- (c) Smoking areas may be designated in Places of Employment only in fully enclosed areas that meet ventilation standards recommended by the National Institute for Occupational Safety and Health (NIOSH). Pursuant to NIOSH standards, the air from designated smoking areas must be exhausted directly outside and not recirculated within the building or mixed with the general dilution ventilation for the building. Smoking areas shall not be designated in a Shared Work Area of a Place of Employment. Smoking shall be permitted in designated smoking areas only when the doors are closed so that no smoke drifts outside the designated smoking area, and when nonsmoking persons are not present in the designated smoking area. Employers shall provide to employees written information concerning smoking at the Place of Employment, including the location of designated smoking and no-smoking areas.
- (d) Notwithstanding any other provisions of this Division, any facility or area may be designated in its entirety as a no- smoking area by the owner or manager thereof.

*(Renumbered from Sec. 45.0104 and amended 3-8-1994 by O-18047 N.S.)*

#### **§43.1005 Posting of Signs**

- (a) The owner, operator or manager of any Public Place or Place of Employment shall ensure that signs are posted in accordance with this section to designate smoking and no-smoking areas.

- (b) Signs which designate smoking or no-smoking areas established by this Division shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this Division.
- (c) No-smoking signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so that they are clearly visible to persons entering the store, and clearly visible to persons at meat and produce counters.
- (d) Signs shall be placed at all entrances to Public Places and Places of Employment, except restaurants, that read substantially as follows: NO SMOKING EXCEPT IN DESIGNATED AREAS.
- (e) Smoking shall be permitted in Public Places and Places of Employment, except restaurants, only in areas containing a sign that reads substantially as follows: DESIGNATED SMOKING AREA.
- (f) Restaurants shall either place a sign at the restaurant entrance as provided above or shall place signs in the restaurant interior which designate smoking or no-smoking areas. The manner consisting of posting signs required by this Division, including the wording, size, color, design, and place of posting whether on the walls, doors, tables, counters, stands or elsewhere shall be at the discretion of the owner, operator, manager, or other person having control of such room, building, or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this Division.

*(Renumbered from Sec. 45.0105 and amended 3-8-1994 by O-18047 N.S.)*

#### **§43.1006 Governmental Agency Cooperation**

The City Manager shall annually request such governmental and educational agencies involved with their specific business within the City of San Diego to establish local operating procedures to cooperate and comply with this ordinance. In Federal, State, County, and special school districts within the City of San Diego, the City Manager shall urge enforcement of their existing no-smoking prohibitions and request cooperation with this ordinance.

*(Renumbered from Sec. 45.0106 on 3-8-1994 by O-18047 N.S.)*

#### **§43.1007 Exemptions**

- (a) No-smoking areas are not required in hotel and motel meeting and assembly rooms rented to guests, areas and rooms while in use for private social functions, private hospital rooms, psychiatric facilities, including psychiatric

units of hospitals, chemical dependency and substance abuse facilities, including chemical dependency and substance abuse treatment units within hospitals, long term nursing facilities, jails, bars, and stores that deal exclusively in tobacco products and accessories.

- (b) Nothing in this Division shall be construed to prohibit smoking by any theatrical or musical artist while such artist is performing on stage, provided that smoking is a bona fide part of the act and that no other laws, ordinances, or regulations are violated thereby.
- (c) Any owner or manager of a business or other establishment subject to this Division may apply to the City Manager for an exemption or modification of the provisions of this Division due to unique or unusual circumstances or conditions.
- (d) Criteria for Exemption

The City Manager, or a designee of the City Manager, shall have the sole authority and discretion to grant or deny requests for exemptions submitted under Section 43.1007. In passing decision on such applications, the City Manager, or designee, shall take due account of the following considerations, as they reasonably apply to each application:

- (1) Whether the applicant has demonstrated an adequate understanding of the requirements of this Division, such that it is clear that the application is not based on a misunderstanding of the minimum requirements of compliance.
- (2) The extent of efforts the business has made toward compliance with the requirements of this Division.
- (3) The physical structure of the area for which the exemption is sought.
- (4) The number of employees in or near the area for which the exemption is sought.
- (5) The nature and frequency of contact that the applicant's business has with the public.
- (6) Whether physical disabilities of employees would render compliance with the requirements of this Division unreasonably difficult.

The burden of proof shall be upon the applicant to show by substantial evidence that such unique or unusual circumstances exist, in respect to the foregoing considerations, that there is a necessary and compelling reason to grant an exemption.

*(Renumbered from Sec. 45.0107, retitled to "Exemptions" and amended 3-8-1994 by O-18047 N.S.)*

#### **§43.1008 Duty to Enforce**

- (a) The City Manager shall be responsible for compliance with this Division when facilities which are owned, operated or leased by The City of San Diego are involved. The City Manager shall provide business license applicants with copies of this Division.
- (b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all signs required by Section 43.1005 of this Division. Owners, operators, managers or employees of same shall be required to orally inform persons violating this Division of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation.
- (c) It shall be the responsibility of employers to disseminate information concerning the provisions of this Division to employees.
- (d) Any owner, operator, manager, or employee of any facility, business, or agency who after having informed a violator of this Division of the provisions herein continues to witness said violation, shall have the express right to refuse business or service to that violator.

*(Renumbered from Sec. 45.0108, retitled to "Duty to Enforce" and amended 3-8-1994 by O-18047 N.S.)*

#### **§43.1009 Violations and Penalties**

- (a) Any person who violates any provision of this Division by smoking in a posted "No Smoking" area is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (b) An owner, operator or manager of any facility, business or agency who knowingly permits patrons to violate Section 43.1003, or who knowingly fails to discharge any duty arising from the provisions of this Division, is guilty of a misdemeanor and subject to any enforcement option or penalty provision set

forth in Chapter One of this Code to address violations of law.  
(Renumbered from Sec. 45.0109 and amended 3–8–1994 by O–18047 N.S.)

#### **§43.1010 Education for No–Smoking Program**

The City Manager, through the office of Citizens Assistance and Information, shall engage in a continuing program to inform and clarify the purposes of this Division to citizens affected by it, and to guide owners, operators and managers in their compliance.

The City shall leave the responsibility of conducting a public education campaign, regarding the health–degrading aspects of smoking, to other governmental and health agencies equipped with the needed expertise to conduct such campaigns.  
(Renumbered from Sec. 45.0110 and amended 3–8–1994 by O–18047 N.S.)